

IRRIGATION RESERVATIONS
OF CONSERVATION DISTRICTS
AND STATE AGENCIES

25. Subject to the conditions stated below in paragraphs No. 43 through 53, the Applicant, Park Conservation District, pursuant to Application No. 10,004-r43B, is granted a reservation of water allowing the total appropriation of not more than 64,125 acre-feet of water per year with a maximum diversionary flow rate of 445.9 cubic feet of water per second, from the Yellowstone River, to be used for the irrigation of approximately 21,664 acres.

26. Subject to the conditions stated below in paragraphs No. 43 through 53, the reservant, Sweet Grass Conservation District, pursuant to Application No. 9948-r42M, is granted a reservation of water allowing the total appropriation of not more than 46,245 acre-feet of water per year with a maximum diversionary flow rate of 363.4 cubic feet of water per second, from the Yellowstone River and souther tributaries of the Yellowstone River as set forth in the application, to be used for the irrigation of approximately 15,313 acres.

27. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, Stillwater Conservation District, pursuant to Application No. 9935-r43QJ, is granted a reservation of water allowing the total appropriation of not more than 16,755 acre-feet of water per year with a maximum diversionary flow rate of 122.1 cubic feet of water per second, from the Yellowstone and Stillwater Rivers and other tributaries of the Yellowstone River as set forth in the Application, to be used for the irrigation of approximately 5,290 acres.

28. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, Carbon Conservation District, pursuant to Application No. 9944-43D, is granted a reservation of water allowing the total appropriation of not more than 22,676 acre-feet of water per year with a maximum diversionary flow rate of 130.7 cubic feet of water per second, from the Yellowstone and Clarks Fork Rivers and other tributaries of the Yellowstone River as set forth in the Application, to be used for the irrigation of approximately 10,034 acres.

29. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, Yellowstone Conservation District, pursuant to Application No. 9949-r42M, is granted a reservation of water allowing the total appropriation of not more than 57,963 acre-feet of water per year with a maximum diversionary flow rate of 373.2 cubic feet of water per second, from the Yellowstone River, to be used for the irrigation of approximately 24,335 acres.

30. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, Big Horn Conservation District, pursuant to Application No. 9952-r43P, is granted a reservation of water allowing the total appropriation of not more than 20,185 acre-feet of water per year with a maximum diversionary flow rate of 143.8 cubic feet of water per second, from the Big Horn River, to be used for the irrigation of approximately 9,175 acres.

31. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, Treasure Conservation District, pursuant to Application No. 10,003-r42KJ, is granted a reservation of water allowing the total appropriation of not more than 18,361 acre-feet of water per year with a maximum diversionary flow rate of 118.6 cubic feet of water per second, from the Yellowstone and Big Horn Rivers, to be used for the irrigation of approximately 7,035 acres.

32. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, Rosebud Conservation District, pursuant to Application No. 10,005-r42KJ, is granted a reservation of water allowing the total appropriation of not more than 87,003 acre-feet of water per year with a maximum diversionary flow rate of 540.7 cubic feet of water per second, from the Yellowstone River and other tributaries as set forth in the Application, to be used for the irrigation of approximately 34,525 acres.

33. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, North Custer Conservation District, pursuant to Application No. 9947-r42m, is granted a reservation of water allowing the total appropriation of not more than 28,478 acre-feet of water per year. From the total of this reservation, 18,301 acre-feet per year is from the Yellowstone River and 10,177 acre-feet per year is from the Powder River and the tributaries of the Powder River to be used for waterspreading.

34. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, Powder River Conservation District, pursuant to Application No. 9943-r42J, is granted a reservation of water allowing the total appropriation of not more than 13,680 acre-feet of water per year from the Powder River mainstem and tributaries as set forth in the Application to be used for waterspreading on approximately 9,120 acres. The Powder River Conservation District request of 75,560 acre-feet per year from the Powder River is denied.

35. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, Prairie County Conservation District, pursuant to Application No. 9946-r42M, is granted a reservation allowing the total appropriation of not more than 68,467 acre-feet of water per year. Of the total reservation, the amount of water reserved from the Yellowstone River is 68,024 acre-feet per year to be used to irrigate 22,241 acres with a maximum diversionary flow rate of 552.7 cfs. Of the total reservation, the amount of water reserved from the Powder River is 443 acre-feet of water per year to be used for waterspreading of 295 acres.

36. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, Dawson County Conservation District, pursuant to Application No. 9951-r42M, is granted a reservation of water allowing the total appropriation of not more than 45,355 acre-feet of water per year with a maximum diversionary

flow rate of 330.8 cubic feet of water per second, from the Yellowstone River, to be used for the irrigation of approximately 18,127 acres.

37. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, Richland County Conservation District, pursuant to Application No. 9945-r42M, is granted a reservation of water allowing the total appropriation of not more than 45,620 acre-feet of water per year with a maximum diversionary flow rate of 354.2 cubic feet of water per second, from the Yellowstone River to be used for the irrigation of approximately 21,710 acres.

38. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, Little Beaver Conservation District, pursuant to Application No. 11349-r42L&M, is granted a reservation of water allowing for the total appropriation of not more than 12,773 acre-feet of water per year from O'Fallon, Pencil and Cabin Creeks. Of the reservation, 4,273 acre-feet of water per year is to be used for the purpose of irrigation, 6,000 acre-feet of water per year is to be used for the purpose of waterspreading, 1,800 acre-feet of water per year is to be used for stockwatering ponds, and 700 acre-feet per year is to be used for recreational ponds.

39. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, Buffalo Rapids Project, pursuant to Application No. 6294-r4B, is granted a reservation of water allowing the total appropriation of not more than 11,997 acre-feet of water per year with a maximum diversionary flow rate of 16.55 cubic feet of water per second, from the Yellowstone River, to be used for the irrigation of approximately 3,100 acres located within the Terry Unit Additions, Fallon Unit Additions, and Buffalo Rapids Project Additions, as set forth in the Findings of Fact and Conclusions of Law as adopted by the Board.

40. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, Montana Department of State Lands, pursuant to Application No. 9931-r, is granted a reservation of water allowing the total appropriation of

more than 12,858 acre-feet of water per year with a maximum diversionary flow rate of 86.11 cubic feet of water per second, from the Yellowstone River, Big Horn River, Rock Creek, Daisy Dean Creek, Alkali Creek, Big Timber Creek and Red Lodge Creek, for the irrigation of approximately 4,286 acres.

41. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, Montana Department of State Lands, pursuant to Application No. 9933-r, is granted a reservation of water allowing the total appropriation of not more than 25,889.78 acre-feet of water per year with a maximum diversionary flow rate of 185.2 cubic feet of water per second, from sources specified in Application No. 9933-r, excluding the Tongue and Powder Rivers, for the irrigation of approximately 9,236.82 acres.

42. Subject to the conditions stated below in paragraphs No. 43 through 58, the reservant, Montana Department of State Lands, pursuant to Application No. 9934-r, is granted a reservation of water allowing the total appropriation of not more than 15,078 acre-feet of water per year from the Yellowstone River, to be used for waterspreading of approximately 10,270 acres of land located in Rosebud, Treasure, Sweet Grass, Big Horn, Yellowstone, Richland, Prairie, Dawson, Powder River, and Custer counties.

43. The reservations are ordered adopted subject to any final determination of prior existing water rights in the source of supply as provided for by Montana law.

44. The reservations are ordered adopted subject to any final determination of senior water rights in the source of supply, including but not limited to any decreed rights or federal or Indian reserved rights, but not subject to any right to appropriate water which may arise from the permit applications suspended by the Yellowstone Moratorium (Section 89-8-103 et seq., R.C.M. 1947). Pursuant to

Section 89-8-105(2), R.C.M. 1947, the reservation is a preferred use over any right to appropriate water which may arise from the permit applications suspended during the Yellowstone Moratorium.

45. The reservant may only appropriate water pursuant to the reservation at such times when to so appropriate will not adversely affect any senior water right in the source of supply as set forth in the preceeding paragraph.

46. The reservant shall within three years of the effective date of the adoption of the reservation submit a detailed plan identifying projects to be developed to the DNRC for approval by the Board.

(a) The plan shall include a list of accomplishments to date, a construction schedule, and a schedule toward putting the reserved water to beneficial use. The plan shall specify the scheduling of economic, engineering, soils, marketing and other studies which may be necessary. The plan shall specify in detail and show on maps (using 7½ minute U.S.G.S. Quadratic maps, if available) the specific projects to be developed. Except upon approval of the Board such projects shall be limited to those proposed in the Application and not rejected in the Findings. The plan shall specify the proposed points of diversion and associated places of use; the rate of diversion and volume of water to be diverted from each point of diversion; the periods of diversion and use; the intended location of diversion; impoundment; conveyance, and delivery facilities; and preliminary engineering plans of diversion, impoundment, conveyance, and delivery facilities. The preliminary engineering plans shall be of sufficient detail to show the capacity size, and location of the diversion, impoundment, conveyance, and delivery facilities. The plan submitted shall be consistent with the Application as limited or modified by the Findings and with the reservation as herein ordered adopted.

(b) The reservant may not commence construction of diversion, impoundment, conveyance, or delivery works of any portion of the plan, except upon approval of the Board. The reservant must submit a detailed engineering

plan of the proposed facility to be built at least six months in advance of the proposed construction starting date.

(c) Upon review of the plan submitted by the reservant pursuant to subparagraphs (a) and (b) above the Board, within six (6) months of submission of plans by the reservant, may at its discretion approve, modify or deny the proposed plan or a portion thereof. Conditions for denying a plan may result from one or more of the following:

- (1) Water is not available at the intended point of diversion, or
- (2) The plan adversely affects prior water rights, or
- (3) The proposed diversion, impoundment, conveyance, or delivery facility is inadequate, or
- (4) The plan is incompatible with local and regional planning efforts, or
- (5) The plan fails to meet the basic interests of the people of Montana, or
- (6) The plan fails to meet the objectives of the reservation, or
- (7) The plan would not be in compliance with pertinent state or federal laws or environmental standards, or
- (8) The plan proposes use of water which is not beneficial use, or
- (9) The plan does not demonstrate adequate and reasonable water conservation measures, or
- (10) The plan is not reasonable and is speculative.

(d) Upon a showing of good cause for an extension of time to submit a plan, the Board may extend the time that the reservant has to submit a plan, but the Board may not extend the time past five years of the effective date of the adoption of the reservation.

(c) The Board shall allow the public to comment on the proposed plan prior to the Board's decision.

47. The reservant may only appropriate water pursuant to the reservation at such times when to so appropriate will not adversely affect any prior water reservation as adopted by the Board.

48. The reservant shall submit to the Board an annual progress report at each anniversary date of the effective date of the adoption of the reservation. This requirement shall continue in effect until the complete development of the reservation. The annual progress report shall set forth accomplishments toward the complete development of the reservation, a schedule of anticipated progress and other information as may be prescribed by the Board. Feasibility studies; detailed economics, engineering, environmental, and marketing studies; construction and operating plans; water contracts; and any other studies and plans prepared in conjunction with the reservation projects shall accompany the annual progress report submitted next following their completion, except that environmental statements and other reports having time limits for review or comment shall be submitted immediately upon their completion.

49. Adequate measuring devices approved by the DNRC shall be installed during construction on all reservation diversion, impoundment, conveyance, and delivery facilities. The water diverted, impounded, conveyed and returned shall be measured and recorded on a regular basis throughout the life of the project. Such records shall be submitted by the reservant to the Board or the DNRC upon request.

50. Any change in point of diversion, place of use, use, or place of storage from the plan approved by the Board shall be made in accordance with the procedures established by Sections 89-892 and 89-893, R.C. 1947. The Department shall approve or deny the proposed change, giving due consideration to the requirements of the public interest. No change shall be approved which does not meet all of the pertinent criteria of Section 89-890,

R.C.M. 1947, for the issuance of an order adopting a reservation.

(a) The Department may provide for a public hearing on any change in point of diversion, place of use, use or place of storage from the plan submitted to and approved by the Board.

51. The DNRC, may with the approval of the Board, issue temporary permits for the use of reserved water, provided such temporary permits are subject to the terms and conditions it considers necessary for the protection of the objectives of the reservation.

52. The reservant shall participate in and adhere to water management operations that may be implemented in the future by the State of Montana.

53. Pursuant to 89-890(6), R.C.M. 1947, the Board shall periodically, but at least once every ten years, review the feasibility studies, detailed plans, environmental statements, and annual reservation, including reports, to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the Board may at its discretion extend, modify, or revoke the reservation.

(1) Circumstances which may evidence the above include, but are not limited to, the following:

- (a) Failure of the anticipated demand for water for the purpose of the reservation to materialize;
- (b) Inadequacy of the reservation facilities;
- (c) Noncompliance with Montana or federal statutes for environmental standards;
- (d) Incompatibility with local or regional planning efforts;
- (e) Use of the reserved waters for other than beneficial use as defined by Montana law;
- (f) Noncompliance with any of the conditions of this Order.

57. If part of this Order is invalid, all valid parts remain in effect. If part of this Order is invalid in one or more of its applications, the part remains in effect for all valid applications.

(2) The Board may give notice and provide for a public hearing on whether to extend, modify or revoke a reservation. The public hearing will be held pursuant to the procedures of the Montana Administrative Procedure Act.

54. The reservations shall be perfected by the respective reservants as set forth in the following table:

<u>Conservation Districts</u>	<u>Year</u>
Stillwater	2000
Powder River	2000
Carbon	2007
Richland	2000
Prairie	2000
North Custer	2007
Sweet Grass	2007
Yellowstone	2007
Dawson	1990
Big Horn	2007
Treasure	2000
Park	2007
Rosebud	2000
Little Beaver	2000
Buffalo Rapids Irrigation District	2000
State Lands - 9931-r	2000
State Lands - 9933-r	2000
State Lands - 9934-r	2000

55. Any and all liability arising from the reservation is the sole responsibility of the reservant. In ordering a reservation adopted, the Board assumes no liability.

56. Unless otherwise stated, conditions of this Order may be modified or withdrawn by the Board at its discretion should future circumstances warrant. In such event notice will be given, and, if objections are received, a hearing will be held.

IRRIGATION RESERVATION OF
FEDERAL AGENCIES

59. Subject to the conditions stated below in paragraphs No. 59 through 75, the reservant, Bureau of Land Management, pursuant to Application No. 123101-r, is granted a reservation of water allowing the total diversion and appropriation of not more than 2,924 acre-feet of water per year with a maximum diversionary flow rate of 12.287 cubic feet of water per second from O'Fallon Creek, a tributary of the Yellowstone River, to be used for the irrigation of approximately 1,990 acres from May 15 through September 15.

60. Subject to the conditions stated below in paragraphs No. 59 through 75, the reservant, Bureau of Land Management, pursuant to Application No. 123102-r, is granted a reservation of water allowing the total diversion and appropriation of not more than 17,476 acre-feet of water per year with a maximum diversionary flow rate of 75.76 cfs from the Yellowstone River, to be used for the irrigation of approximately 3,738 acres from May 15 through September 15.

61. The reservations are ordered adopted subject to any final determination of prior existing water rights in the source of supply as provided for by Montana law.

62. The reservations are ordered adopted subject to any final determination senior water rights in the source of supply, including but not limited to any decreed rights or federal or Indian reserved rights, but not subject to any right to appropriate water which may arise from the permit applications suspended by the Yellowstone Moratorium (Section 89-8-103 et seq., R.C.M. 1947). Pursuant to Section 89-8-105(2), R.C.M. 1947, the reservation is a preferred use over any right to appropriate water which may arise from the permit applications suspended during the Yellowstone Moratorium.

63. The reservant may only appropriate water pursuant to the reservation at such times when to so appropriate will not adversely affect any senior water right in the source of supply as set forth in the preceeding paragraph.

64. The reservant shall within three years of the effective date of the adoption of the reservation submit a detailed plan identifying projects to be developed to the DNRC for approval by the Board.

(a) The plan shall include a list of accomplishments to date, a construction schedule, and a schedule toward putting the reserved water to beneficial use. The plan shall specify the scheduling of economic, engineering, soils, marketing and other studies which may be necessary. The plan shall specify in detail and show on maps (using 7½ minute U.S.G.S. Quadratic maps, if available, the specific projects to be developed. Except upon approval of the Board such projects shall be limited to those proposed in the Application and not rejected in the Findings. The plan shall specify the proposed points of diversion and associated places of use; the rate of diversion and volume of water to be diverted from each point of diversion; the periods of diversion and use; the intended location of diversion; impoundment; conveyance, and delivery facilities; and preliminary engineering plans of diversion, impoundment, conveyance, and delivery facilities. The preliminary engineering plans shall be of sufficient detail to show the capacity size, and location of the diversion, impoundment, conveyance, and delivery facilities. The plan submitted shall be consistent with the Application as limited or modified by the Findings and with the reservation as herein ordered adopted.

(b) The reservant may not commence construction of diversion, impoundment, conveyance, or delivery works of any portion of the plan, except upon approval of the Board. The reservant must submit a detailed engineering plan of the proposed facility to be built at least six months in advance of the proposed construction starting date.

(c) Upon review of the plan submitted by the reservant pursuant to subparagraphs (a) and (b) above the Board, within six (6) months of submission of plans by the reservant, may at its discretion approve, modify or deny the proposed plan or a portion thereof. Conditions for denying a plan may result from one or more of the following:

- (1) Water is not available at the intended point of diversion, or
- (2) The plan adversely affects prior water rights, or
- (3) The proposed diversion, impoundment, conveyance, or delivery facility is inadequate, or
- (4) The plan is incompatible with local and regional planning efforts, or
- (5) The plan fails to meet the basic interests of the people of Montana, or
- (6) The plan fails to meet the objectives of the reservation, or
- (7) The plan would not be in compliance with pertinent state or federal laws or environmental standards, or
- (8) The plan proposes use of water which is not a beneficial use, or
- (9) The plan does not demonstrate adequate and reasonable water conservation measures, or
- (10) The plan is not reasonable and is speculative

(d) Upon a showing of good cause for an extension of time to submit a plan, the Board may extend the time that the reservant has to submit a plan, but the Board may not extend the time past five years of the effective date of the adoption of the reservation.

(e) The Board shall allow the public to comment on the proposed plan prior to the Board's decision.

65. The reservant may only appropriate water pursuant to the reservation at such times when to so appropriate will not adversely affect any prior water reservation as adopted by the Board.

66. The reservant shall submit to the Board an annual progress report on each anniversary date of the effective date of the adoption of the reservation. This requirement shall continue in effect until the complete development of the reservation. The annual progress report shall set forth accomplishments toward the complete development of the reservation, a schedule of anticipated progress, and other information as may be prescribed by the Board. Feasibility studies; detailed economics, engineering, environmental, and marketing studies; construction and operating plans; water contracts; and any other studies and plans prepared in conjunction with the reservation projects shall accompany the annual progress report submitted next following their completion, except that environmental statements and other reports having time limits for review or comment shall be submitted immediately upon their completion.

67. Adequate measuring devices approved by the DNRC shall be installed during construction on all reservation diversion, impoundment, conveyance, and delivery facilities. The water diverted, impounded, conveyed and returned shall be measured and recorded on a daily basis throughout the life of the project. Such records shall be submitted by the reservant to the Board or the DNRC upon request.

68. Any change in point of diversion, place of use, use, or place of storage from the plan approved by the Board shall be made in accordance with the procedures established by Sections 89-892 and 89-893, R.C.M. 1947. The Department shall approve or deny the proposed change, giving due consideration to the requirements of the public interest. No change shall be approved which does not meet all of the pertinent criteria of Section 89-890, R.C.M. 1947, for the issuance of an order adopting a reservation.

(a) The Department may provide for a public hearing on any change in point of diversion, place of use, use or place of storage from the plan submitted to and approved by the Board.

69. The DNRC, may with the approval of the Board, issue temporary permits for the use of reserved water, provided such temporary permits are subject to the terms and conditions it considers necessary for the protection of the objectives of the reservation.

70. The reservant shall participate in and adhere to water management operations that may be implemented in the future by the State of Montana.

71. Pursuant to 89-890(6), R.C.M. 1947, the Board shall periodically, but at least once every ten years, review the feasibility studies, detailed plans, environmental statements, and annual reservation, including reports, to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the Board may at its discretion extend, modify or revoke the reservation.

(1) Circumstances which may evidence the above include, but are not limited to, the following:

- (a) Failure of the anticipated demand for water for the purpose of the reservation to materialize;
- (b) Inadequacy of the reservation facilities;
- (c) Noncompliance with Montana or federal statutes for environmental standards;
- (d) Incompatibility with local or regional planning efforts;
- (e) Use of the reserved waters for other than beneficial use as defined by Montana law;
- (f) Noncompliance with any of the conditions of this Order;

(2) The Board may give notice and provide for a public hearing on whether to extend, modify or revoke a reservation. The public hearing will be held pursuant to the procedures of the Montana Administrative Procedure Act.

72. The reservant shall perfect the reservation by the year 2000 or by such extended time period as the Board in its discretion may designate.

73. Any and all liability arising from the reservation is the sole responsibility of the reservant. In ordering a reservation adopted, the Board assumes no liability.

74. Unless otherwise stated, conditions of this Order may be modified or withdrawn by the Board at its discretion should future circumstances warrant. In such event notice will be given, and, if objections are received, a hearing will be held.

75. If part of this Order is invalid, all valid parts remain in effect. If part of this Order is invalid in one or more of its applications, the part remains in effect for all valid applications.

76. Paragraphs No. 59 through 76, granting and conditioning the two Federal Irrigation Reservations, and the three State Agencies', and the Conservation Districts', and Irrigation District Irrigation Reservations, are ordered adopted effective at 4:18 o'clock P M. on the 15 day of December, 1978.

Oecil Weeding
Chairman, Montana Board of Natural
Resources and Conservation

Wm H. Bentsen

Frank L. ...

Wilson F. Clark

R. J. Huff